

REFLECTIONS

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When is a Child a Child?

Two court cases, one currently being considered, the other soon-to-be, raise numerous questions about when a child has legal rights and under what conditions.

In California, David Daleiden, Sandra Merritt and three others associated with the Center for Medical Progress are being tried for surreptitiously videotaping conversations of Planned Parenthood officials, who were discussing the organization altering abortion procedures to harvest marketable baby body parts. In closing arguments for the preliminary criminal hearing, the California attorney general stated “that a fetus is not a ‘human being’ or a ‘person’ within the meaning of the” state Penal Code. Since a fetus occasionally will survive an abortion procedure, one of the defense attorneys said this argument implies that in California killing a “fetus” born alive during an abortion is not considered infanticide.

This view is not unique to the California prosecutor. Virginia Gov. Ralph Northam, a physician, defending a state bill that would allow late-term abortions, stated that if a child should survive an abortion “the infant would be resuscitated if that’s what the mother and the family desired, and then a discussion would ensue between the physicians and the mother.” Their option for the infant – life or death!

Washington Sen. Patty Murray, in objecting to the *Born-Alive Abortion Survivors Protection Act*, said that the choice to let a baby who survives a failed abortion die is up to “a woman and her doctor.” These were virtually the same words used by a Planned Parenthood official when she testified before Congress.

Is infanticide becoming acceptable in America, at least for children who survive a botched abortion? Since when do all children born alive not have the protection of the law? Does the Fourteenth Amendment -- “No State shall...deprive any person of life, liberty, or property, without due process of law” -- apply only to certain births, but not others?

Should a child surviving an abortion attempt not be entitled to receive the same immediate, lifesaving care as would any other child born at the same gestational age?

If a physician can legally deny medical care to a child surviving an abortion and let it die slowly, why is taking action to kill it quickly illegal? Why was Kermit Gosnell convicted?

If an abortion survivor can legally be left to die, how long can the baby linger before the inaction becomes infanticide? One minute? One hour? One day?

A mother carrying twins may go into premature labor and deliver one child, before her labor stops. The second child may be born several days, weeks or even months later. In that interim period, one twin has the protection of law, the other does not. Does this make sense?

If a woman delivers a child, but within moments decides she does not want it, should she be allowed to let it die?

If partial-birth abortion is illegal, how can killing a child in the womb immediately before delivery or purposely letting it die after delivery be legal?

These questions and others about the rights of the pre-born and newly-born are raised not only by the Daleiden-Merritt trial, but by an upcoming Supreme Court case. The Justices recently agreed to review *June Medical Services v. Gee*, in which abortion advocates are challenging a Louisiana law that requires abortionists to have admitting privileges at a nearby hospital.

Although this case will not directly affect the legality of abortion, it may indicate how the Supreme Court will treat state laws that set limitations on when and under what conditions abortions can be performed. An increasing number of states are enacting TRAP laws, which target the regulation of abortion providers. They have banned abortions based on disability, sex, after a child is viable outside of the womb, can feel pain, or when a fetal heartbeat is first detected, among other restrictions.

While TRAP laws aim at protecting the unborn child and mother, there are wide variations among the laws that have been passed, even among those with the same purpose. If states can ban abortions after the child can live outside of the womb, why do some states set 28 weeks as the limit for abortions, others 26 or 24 weeks, when children are known to survive as early as 20 weeks or less of gestation?

If the aim is to prohibit abortion when the preborn child can feel pain, what should be the gestational-age limit? The American College of Obstetrics and Gynecology holds that a fetus cannot feel pain until the third trimester of pregnancy, that is, at about 27 weeks. The Charlotte Lozier Institute, in contrast, claims that a fetus can feel pain at 20 weeks or earlier. Some neurologists have found that a fetus is “extremely sensitive to painful stimuli” starting at the 15th gestation week. Advanced 4-dimensional ultrasounds show that a fetus may react to noxious stimuli at 8 weeks or less. Still others hold that as pain is subjective its onset cannot be inferred from anatomical developments. With such a lack of agreement, should not the laws reflect a cautious approach and prohibit abortions after the minimum possible age of pain consciousness?

If the aim is to protect the fetus after a heartbeat is detected, when does this occur? Vaginal ultrasounds show heartbeats occurring at 5-1/2 to 6 weeks of gestation, although science has detected heartbeats at 22 days. Some scientists, however, claim these are not true heartbeats, but flutters caused by the developing heart’s ability to fire electrical signals, as the heart does not become a four-chambered organ until week nine. When, one may ask, is a heartbeat a heartbeat?

The Supreme Court’s ruling on the Louisiana law will be carefully analyzed, for other TRAP law cases are likely to follow. Justice Harry Blackman, in writing the majority opinion in *Roe v. Wade*, stated that when it is established at what point “the fetus is a ‘person’ within the language and meaning of the Fourteenth Amendment,” the case for abortion will collapse “for the fetus’ right to life would then be guaranteed specifically by the Amendment.”

Science has shown that life begins at conception. The nearly half-century of legal battles over abortion will continue until the Supreme Court considers the question of when the living, fetal child gains personhood.

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